


# MEMORANDUM

June 14, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: LEELA A. KAPUR   
Assistant County Counsel  
Public Services Division

RE: County of Los Angeles v. Diana Bonta and State Department  
of Health Services  
Los Angeles Superior Court; BS 084710

DATE OF  
INCIDENT: October 1999 through July 2002

AUTHORITY  
REQUESTED: Accept \$94,525


COUNTY  
DEPARTMENT: Department of Health Services

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## CLAIMS BOARD ACTION:

☒ Approve                      ☐ Disapprove                      ☐ Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on July 19, 2004

## SUMMARY

This is a recommendation to settle a County lawsuit against the State Medi-Cal program which challenges the denial of Treatment Authorization Requests ("TARs"). The proposed settlement covers the following:

1. A total of 160 days of care provided to Medi-Cal patients at the LAC+USC Medical Center ("LAC/USC"), Harbor/UCLA Medical Center ("H/UCLA"), and Rancho Los Amigos National Rehabilitation Center ("RLANRC"). The maximum value to the County of this lawsuit is approximately \$187,400.
2. As to LAC/USC, the lawsuit involves 17 acute care days, with a total of approximately \$20,115 at issue. As to H/UCLA, 117 acute care days, with a total of approximately \$139,815, are at issue. As to RLANRC, 26 acute care days, with a total of approximately \$27,470, are at issue.
3. The lawsuit includes services provided from October 1999 through July 2002.

Under the proposed settlement, the State will process the TARs for 69 acute days and 69 acute administrative days, thus allowing the County to receive reimbursement in the amount of approximately \$94,525. Additionally, the County will be able to claim all 138 of the days in the settlement for purposes of calculating its Disproportionate Share Hospital ("DSH") payments.

## LEGAL PRINCIPLES

The Medi-Cal program is obligated to pay for inpatient treatment only to the extent that the hospital has obtained an approved TAR from the Medi-Cal program for each day of the hospital stay. The Medi-Cal program has an obligation to grant a TAR if the patient is entitled to full scope Medi-Cal benefits and there is a showing of medical necessity based upon information in the patient's medical record. Many of the patients whose TARs were denied were undocumented aliens, also known as "OBRA" patients, who are only entitled to Medi-Cal if the care provided constituted emergency services.

## SUMMARY OF FACTS

As required by the Medi-Cal program, each County hospital seeks a TAR for each day of inpatient care to a Medi-Cal beneficiary. When a TAR is denied and the hospital questions the denial, the matter is usually resolved through discussions between hospital personnel and Medi-Cal officials. If not resolved through this informal process, two levels of more formal appeal are available.

However, when a dispute cannot be resolved through the appeal process, the only effective method for further challenge is through litigation like this case.

TAR denial litigation is usually not very cost effective to pursue, since each day of care is justified by its own particular set of facts and the cost to prove the claim can often exceed its value. Nevertheless, the County Department of Health Services periodically identifies for pursuit through litigation denied TARs where services were provided and where there appears to be a strong basis for questioning the State's denial. The County has filed a number of these cases since the inception of the Medi-Cal program.

The vast majority of TARs are approved either when initially presented to the State or as the result of informal discussions at the hospital after a denial. Some TAR denials are reversed at the first or second level of appeal. Consequently, TAR denials which are taken to litigation are the ones most difficult to overturn, and, thus, their settlement value is relatively low.

This lawsuit challenges denied TARs for 160 days of care at three County hospitals during the period of October 1999 through July 2002. The maximum value to the County for these days of care is approximately \$187,400.

## STATUS OF CASE

This case is being settled at an early stage of litigation as the Department of Health Services, through counsel, has established a practice of entering into negotiations with the State immediately after filing this type of lawsuit. This allows us to resolve the issues without incurring the extensive costs associated with discovery and trial preparation. Unfortunately, the State attorneys have required that we file the litigation before they are willing to enter into settlement negotiations.

## EVALUATION

The total settlement amount of approximately \$94,525 is equal to approximately 50% of the total amount at issue. Because the TAR denials under review in any litigation are denials which have been upheld through several reviews, they necessarily are denials which will be difficult to overturn.

Additionally, the federal courts have established an extremely narrow definition of "emergency," in the context of determining the scope of services covered under Medicaid for undocumented aliens. If this definition were applied to the claims at issue involving services to undocumented aliens, the court could possibly determine that a large percentage of the TARs at issue in the proposed settlement that involve care to undocumented aliens is not covered by Medi-Cal, because the services do not meet the definition of "emergency" care.

Additionally, the expense and County resources associated with litigation of this type of case is significant given the number of TARs involved and the factually dependent nature of the litigation. Therefore, it is believed that the proposed settlement is comparable, if not better, than the County likely would recover if this case were litigated.

We join our private counsel of Foley and Lardner LLP in recommending settlement of this lawsuit. The Department of Health Services, which participated in the settlement discussions, is fully in support of this settlement.

APPROVED:

A handwritten signature in cursive script, reading "Leela Kapur", is written over a horizontal line.

LEELA A. KAPUR  
Assistant County Counsel  
Public Services Division

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